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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/11/2003

Scott Sims

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EXAMINER

HOEL, MATTHEW D

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/660,466	Applicant(s) SIMS ET AL.	
	Examiner Matthew D. Hoel	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 13-16, 21-23, 26, 27, 29-31 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8-12, 17-20, 24, 25, 28 and 32-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sines, et al. (U.S. patent 6,165,069 A) in view of Cywar (U.S. patent 4,014,549 A).

1. As to Claim 1: '069 discloses all of the elements of Claim 1, but lacks specificity as to displaying to the player two or more possible ranges in relation to the first two cards. '069 teaches a method of playing a card game comprising providing a gaming device to a player (Abst., Fig. 2). '069 receives a wager from a player at the gaming device (betting chips automatically counted by various methods, Col. 11, Lines 25 to 67). '069 deals two face-up cards to the player from a deck of playing cards (first and second blackjack cards dealt to player, Col. 18, Lines 45 to 60). '069 allows the player

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to select a range from among the two or more possible ranges (suggested basic strategy displayed in lower-right corner 151 of player display 103, Figs. 9 to 20, hit or stand displayed; strategy monitor called and suggested strategy displayed to player, Fig. 30; player has options to split, double down, hit, or stand, Figs. 32 to 35). The examiner is interpreting "range" as broadly as reasonable. The player is able to select a third card within a plurality of ranges. When the player elects to hit, the player is selecting a third card in a first range such that the sum of the third card plus the player's two existing cards will hopefully be greater than the dealer's hand without exceeding 21. Of course, the third card drawn could be in a second range such that the sum of the third card and the player's two existing cards is greater than 21, in which case the player busts. The third card drawn could also be in a third range such that the sum of the third card plus the player's two existing cards is less than the dealer's hand, in which case the player loses. In effect, when the player decides to hit for another card, the player is selecting a card in the range such that his or her hand will be greater than the dealer's without going over 21. In the event the player decides to hit, '069 deals a third card to the player and evaluates whether or not the third card is in the range selected by the player (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16). '549, however, displays two or more possible ranges in relation to the first two cards (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards). It would be obvious to one of ordinary skill in the art to apply the displayed ranges of '549 to the game of '069. The strategy on the cards of '549 is a basic blackjack playing strategy (Col. 4, Lines 48 to 67), like the strategy indicated to the

player in '069 (Col. 18, Lines 22 to 28). This combination would display the strategy charts on the cards of '549 on the cards on the displays of '069. The indicator 151 in the lower-right corner of the player display of '069 would display the optimum strategy to the player. The advantage of this combination would be to display the optimum strategy to the player, while showing the player the information the optimum strategy was derived from, allowing the player to make a more informed choice and increasing his or her understanding of the game. Such a training device could be used to rapidly bring new players up to speed. '069 suggests this, as one of the motivations for '069 is to lower the "intimidation" factor felt by many novice players in casino, which lowers game play at the tables (Col. 5, Line 53 to Col. 6, Line 16).

As to Claim 7: The game of '069 can be played with a single deck of cards (Col. 2, Lines 15 to 19).

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over '069 and '549 in view of Weingardt (U.S. pre-grant publication 2002/0113369 A1, application 09/949,311).

3. As to Claim 2: The combination of '069 and '549 discloses all of the elements of Claim 2, but lacks specificity as to placeholders for 13 cards of each of 13 different ranks. '369, however, teaches placeholders for 13 cards of each of 13 different ranks (Fig. 4, Para. 27). It would be obvious to one of ordinary skill in the art to apply the placeholders of '369 to the combination of '069 and '549. The primary motivations of '069 and '549 are to teach players how to play the game of blackjack as they both

display optimum strategies to the player. The placeholders of '369 would be advantageous, as they would allow the player to see which cards have already been drawn and which remain in the deck.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of '069, '549, and '369. '369 discloses placeholders for 13 cards of each of 13 different ranks (Fig. 4, Para. 27). '369 does not address the display of the placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank. The applicants have not stated or disclosed that having the placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank solves any stated problem or is for any particular purpose (Page 5, specification). Moreover, it appears that '369, or the applicants' invention would perform equally well with placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time of invention to have modified '369 such that the placeholders appear as sunken areas so that when the cards are dealt they appear to fit into the depressions of their respective rank, because such a modification would have been considered a mere design consideration which fails to patentably distinguish over '369.

5. Claims 13, 4, 14 to 16, 21 to 23, 26, 27, and 29 to 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of '069, '549, and '369 in

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view of Scarne ("Scarne's Encyclopedia of Card Games," by John Scarne, (c) 1973, HarperCollins, Pages 278 to 292).

6. As to Claim 13: The combination of '069, '549, and '369 discloses all of the elements of Claim 13, but lacks specificity as to providing a payable that is based upon the number of cards in each of the two or more ranges. '069 teaches a method of playing a card game (Abst., Fig. 2). '069 receives a wager from a player at the gaming device (betting chips automatically counted by various methods, Col. 11, Lines 25 to 67). '069 deals two face-up cards to the player from a deck of playing cards (first and second blackjack cards dealt to player, Col. 18, Lines 45 to 60). '069 allows the player to select a range from among the two or more possible ranges (suggested basic strategy displayed in lower-right corner 151 of player display 103, Figs. 9 to 20, hit or stand displayed; strategy monitor called and suggested strategy displayed to player, Fig. 30; player has options to split, double down, hit, or stand, Figs. 32 to 35). The examiner is interpreting "range" as broadly as reasonable. The player is able to select a third card within a plurality of ranges. When the player elects to hit, the player is selecting a third card in a first range such that the sum of the third card plus the player's two existing cards will hopefully be greater than the dealer's hand without exceeding 21. Of course, the third card drawn could be in a second range such that the sum of the third card and the player's two existing cards is greater than 21, in which case the player busts. The third card drawn could also be in a third range such that the sum of the third card plus the player's two existing cards is less than the dealer's hand, in which case the player loses. In effect, when the player decides to hit for another card, the

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player is selecting a card in the range such that his or her hand will be greater than the dealer's without going over 21. In the event the player decides to hit, '069 deals a third card to the player and evaluates whether or not the third card is in the range selected by the player (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16). '069 provides the player with a win based on the amount wagered if the third card is in the range selected by the player (Fig. 36). '549 displays two or more possible ranges in relation to the first two cards (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards). Both '069 and '549 display basic strategy to the player. Neither reference discloses providing a pay table that is based upon the number of cards in each of the two or more ranges. Scarne, however, discloses the equivalent of a payable for a blackjack game (a blackjack playing table with the payout odds of 3 to 2 printed in large letters, Page 281). It would be obvious to one of ordinary skill in the art to apply the blackjack payable of Scarne to the combination of '069, '549, and '369. The blackjack game disclosed by Scarne is a standard blackjack game that could be played with either the references of '069 and '549. Scarne teaches his own basic blackjack strategy (Pages 285 and 286). The combination of these references would have the equivalent of a payable for blackjack, since the printed payout odds, would indicate the amount paid out if the third card dealt is in the range selected by the player, that is so that the player's total hand is 21 or less but still higher than the dealer's hand. The advantage of this combination would be to clearly indicate to the player the possible potential winnings if the player makes the correct choice in deciding to hit or stand.

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7. As to Claim 4: The combination of '069, '549, '369, and Scarne as discussed in the rejection of Claim 13 pays the player based upon the wager, whether the range selected by the player is the range in which the third card falls, and a payable. Scarne, however the equivalent of a payable for a blackjack game (a blackjack playing table with the payout odds of 3 to 2 printed in large letters, Page 281).

8. As to Claim 14: The game of '549 is played on an electronic gaming machine (Abst.).

9. As to Claim 15: '549 displays two or more possible ranges in relation to the first two cards (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards).

10. As to Claim 16: '369 teaches placeholders for 13 cards of each of 13 different ranks (Fig. 4, Para. 27). The combination of '069, '549, '369, and Scarne would display the dealt cards in the placeholders ('369 drawn indicia indicated in respective positions, Para. 24 to 27).

11. As to Claim 21: Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of '069, '549, '369, and Scarne. The game of '069 can be played with a single deck of cards (Col. 2, Lines 15 to 19). '069 does not address multiple games being played from a single deck of cards. The applicants have not states that this solves any stated problem or is for any particular purpose.

Moreover, it appears that '069, or the applicants' invention, would perform equally well with the limitation of playing multiple games from the same deck of cards. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the

invention was made to have modified '069 such that multiple games are played from a single deck of cards because such a modification would have been considered a mere design choice which fails to patentably distinguish over '069.

12. As to Claim 22: '069 teaches a gaming apparatus (Abst.). '069 has means for receiving a wager from a player (betting chips automatically counted by various methods, Col. 11, Lines 25 to 67). '069 has means for dealing a first and second card to a player (first and second blackjack cards dealt to player, Col. 18, Lines 45 to 60). '549 has means for displaying two or more possible ranges based on the first and second cards dealt to the player (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards). '069 has means for player selection of one of the possible ranges based on the first and second cards (suggested basic strategy displayed in lower-right corner 151 of player display 103, Figs. 9 to 20, hit or stand displayed; strategy monitor called and suggested strategy displayed to player, Fig. 30; player has options to split, double down, hit, or stand, Figs. 32 to 35). '069 has means for dealing a third card to a player (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16). '069 has means for evaluating the third card in comparison to the range selected by the player (Fig. 36). '069 has means for providing a payout when the third card is in the range selected by the player (Fig. 36).

13. As to Claim 23: Scarne discloses the equivalent of a payable for a blackjack game (a blackjack playing table with the payout odds of 3 to 2 printed in large letters, Page 281). The blackjack game disclosed by Scarne is a standard blackjack game that could be played with either the references of '069 and '549. Scarne teaches his own

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basic blackjack strategy (Pages 285 and 286). The combination of these references would have the equivalent of a payable for blackjack, since the printed payout odds, would indicate the amount paid out if the third card dealt is in the range selected by the player, that is so that the player's total hand is 21 or less but still higher than the dealer's hand.

14. As to Claim 26: '369 teaches placeholders for 13 cards of each of 13 different ranks (Fig. 4, Para. 27).

15. As to Claim 27: Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of '069, '549, '369, and Scarne. '369 discloses placeholders for 13 cards of each of 13 different ranks (Fig. 4, Para. 27). '369 does not address the display of the placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank. The applicants have not stated or disclosed that having the placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank solves any stated problem or is for any particular purpose (Page 5, specification).

Moreover, it appears that '369, or the applicants' invention would perform equally well with placeholders as sunken areas such that when the cards are dealt they appear to fit into the depressions of their respective rank. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time of invention to have modified '369 such that the placeholders appear as sunken areas so that when the cards are dealt they appear to fit into the depressions of their respective rank, because such a

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modification would have been considered a mere design consideration which fails to patentably distinguish over '369.

16. As to Claim 29: '069 teaches the gaming apparatus being an electronic gaming machine (Abst.).

17. As to Claim 30: '069 teaches an apparatus for playing a game of cards (Abst.). '069 teaches an electronic video poker-type gaming machine (although main embodiment described is blackjack, the apparatus of '069 can be used for other card games such as poker, Col. 1, Lines 15 to 28). '069 has means for receiving a wager from a player (betting chips automatically counted by various methods, Col. 11, Lines 25 to 67). '069 has means for dealing a first and second card to a player (first and second blackjack cards dealt to player, Col. 18, Lines 45 to 60). '549 has means for displaying two or more possible ranges based on the first and second cards dealt to the player (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards). '069 has means for player selection of one of the possible ranges based on the first and second cards (suggested basic strategy displayed in lower-right corner 151 of player display 103, Figs. 9 to 20, hit or stand displayed; strategy monitor called and suggested strategy displayed to player, Fig. 30; player has options to split, double down, hit, or stand, Figs. 32 to 35). '069 has means for dealing a third card to a player (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16). '069 has means for providing an award when the third card is in the range selected by the player (Fig. 36), wherein the award is based in part on the number of cards in the range selected by the player. The examiner is interpreting "range" as broadly as

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reasonable. The player is able to select a third card within a plurality of ranges. When the player elects to hit, the player is selecting a third card in a first range such that the sum of the third card plus the player's two existing cards will hopefully be greater than the dealer's hand without exceeding 21. Of course, the third card drawn could be in a second range such that the sum of the third card and the player's two existing cards is greater than 21, in which case the player busts. The third card drawn could also be in a third range such that the sum of the third card plus the player's two existing cards is less than the dealer's hand, in which case the player loses. In effect, when the player decides to hit for another card, the player is selecting a card in the range such that his or her hand will be greater than the dealer's without going over 21.

18. As to Claim 31: '069 teaches a method of playing a three-card game (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16). '069 teaches placing a wager (betting chips automatically counted by various methods, Col. 11, Lines 25 to 67). '069 deals two cards to a player (first and second blackjack cards dealt to player, Col. 18, Lines 45 to 60). '069 allows the player to select one of two or more possible ranges wherein a third card may fall (suggested basic strategy displayed in lower-right corner 151 of player display 103, Figs. 9 to 20, hit or stand displayed; strategy monitor called and suggested strategy displayed to player, Fig. 30; player has options to split, double down, hit, or stand, Figs. 32 to 35). The examiner is interpreting "range" as broadly as reasonable. The player is able to select a third card within a plurality of ranges. When the player elects to hit, the player is selecting a third card in a first range such that the sum of the third card plus the player's two existing cards will hopefully be greater than

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the dealer's hand without exceeding 21. Of course, the third card drawn could be in a second range such that the sum of the third card and the player's two existing cards is greater than 21, in which case the player busts. The third card drawn could also be in a third range such that the sum of the third card plus the player's two existing cards is less than the dealer's hand, in which case the player loses. In effect, when the player decides to hit for another card, the player is selecting a card in the range such that his or her hand will be greater than the dealer's without going over 21. '069 deals the third card to the player and evaluates whether it falls in the range selected by the player (third card dealt to player, Col. 19, Lines 18 to 31; Figs. 15, 16; winnings evaluated, Fig. 36). Scarne provides a payout to the player when the cards falls in the range selected by the player where such payout is a multiple of the amount wagered, the multiple being based on the upon the number of cards in the range selected by the player (a blackjack playing table with the payout odds of 3 to 2 printed in large letters, Page 281). The payout is based on the number of cards in the range selected by the player as the third card is in the range selected by the player (a single third card being in the selected range), the range being that the total of the player's subsequent three-card hand is less than or equal to 21 and greater than the dealer's hand. The odds of 3 to 2 are a multiple of the amount of money bet by the player on the blackjack game.

Claim Rejections - 35 USC § 112

19. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

20. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 35 claims to depend from Claim 35. The examiner believes the applicants intend for it to depend from Claim 31.

Allowable Subject Matter

21. Claims 5, 6, 8 to 12, 17 to 20, 24, 25, 28, and 32 to 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In particular, the examiner could not find any suggestion in the prior art of the bonuses of Claims 5, 6, and 8 to 10, the ranges of Claims 11 and 12, or the paytables of Claims 28 and 35 in conjunction with the other claims. Adding these limitations to the blackjack embodiment outlined in the rejections would have created an inoperative device.

Citation of Pertinent Prior Art

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leep, et al. in U.S. patent 5,100,326 A teach basic strategy for blackjack. Jacoby in U.S. patent 5,628,511 A teaches basic strategy for blackjack. Green in U.S. patent 6,131,906 A teaches a blackjack strategy calculator. Bridgeman, et al. in U.S. patent 5,033,744 A teach a poker gaming device with a strategy feature. Brenner in U.S. pre-grant publication 2003/0020235 A1, application 09/916,899, Gordon

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in U.S. patent 1,996,151 A, Finerty in U.S. patent 3,536,328 A, Borianne in U.S. patent 3,863,362 A, Bull in 4,927,149 A, and Musolino in U.S. patent 4,146,233 A teach placeholders for cards of different ranks.

Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew D. Hoel, Patent Examiner
AU 3714


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TL3760